

Message Text

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ACTION L-03

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FM AMEMBASSY SANTIAGO

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EO 11652: N/A

TAGS: CI, PFOR

SUBJECT: EXTRADITION TREATY NEGOTIATIONS -- CHILE

REFS: (A) STATE 82515, (B) 75 SANTIAGO 8179, (C) 75 STATE
294856, (D) 75 STATE 199455, (E) 75 STATE 215698, (F) 75
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1. EMBASSY POUCHING COPIES IN ENGLISH AND SPANISH OF PROPOSED
CHILE/US EXTRADITION TREATY. WITH ONE EXCEPTION NOTED BELOW,
EMBASSY BELIEVES TEXTS INCORPORATE ALL DRAFTING MODIFICATIONS
TO DATE, INCLUDING CHANGE PER REF A.

2. ARTICLE XII ENGLISH AND SPANISH TEXTS STILL NOT IN COMPLETE
AGREEMENT ON ONE PHRASE. PROPOSED CLEAN SPANISH DRAFT STILL
CONTAINS WORDING "SE ANUNCIA EL PROPOSITO DE PEDIR SU
EXTRADICION ..." (PAGE 7 FIRST PARA ARTICLE XII, LINE 5).
DEPARTMENT WILL RECALL SUBSTANTIAL EXCHANGE F TRAFFIC ON
THIS POINT. DURING STEVEN/BAZAN MEETING DECEMBER 3 WE THOUGHT
WE HAD REACHED AGREEMENT ON REWORDING TO READ "SE INDICA EL
OBJECTO DE LA SOLICITUD DE EXTRADICION ..." (REF B) TO WHICH
DEPARTMENT AGREED (REF C).

3. DURING ARTEAGA/CLARE MEETING APRIL 12, HOWEVER, GOC
NEGOTIATOR ACKNOWLEDGED THAT HIS SPANISH AND ENGLISH TEXTS
NOT IN AGREEMENT, BUT INSISTED THAT SPANISH TEXT BETTER
EXPRESSED IDEA. ARTEAGA INTERPRETED SENSE OF SPANISH AS HAD
DEPARTMENT IN REF D AND E, E.G., NOTIFICATION THAT REQUESTING
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GOVERNMENT HAD DECIDED REQUEST FORMAL EXTRADITION. ARTEAGA

MADE POINT THAT THIS PARA IN ARTICLE XII REQUESTS PROVISIONAL DETENTION, NOT FORMAL EXTRADITION. WHILE ADMITTING THAT REQUEST FOR PROVISIONAL DETENTION IMPLICITLY INDICATES REQUESTING GOVERNMENT HAS DECIDED TO SEEK FORMAL EXTRADITION, PURPOSE OF CLAUSE WAS TO EXPLICITLY CONFIRM THAT REQUESTING GOVERNMENT PLANNED TO ASK EXTRADITION. HE CONTENTED FURTHER THAT OTHER CLAUSES IN SAME SENTENCE (DESCRIPTION OF OFFENSE AND EXISTENCE OF WARRANT OR OUTSTANDING CONVICTION OR SENTENCE) WOULD AUTOMATICALLY INDICATE PURPOSE FOR REQUESTED DETENTION. HE SUGGESTED SPANISH WORDING "SE COMUNICA LA DECISION DE PEDIR EXTRADICION ..." IN LIEU OF DRAFT'S VERSION IF DEPARTMENT PREFERRED.

4. ARTEAGA AGREED THAT HIS INTERPRETATION DID NOT SQUARE WITH EXISTING ENGLISH TEXT, WHICH AFTER CLOSE SCURTINY HE THOUGHT REDUNDANT. PURPOSE OF REQUEST FOR PROVISIONAL DETENTION WOULD BE OBVIOUS FROM DESCRIPTION OF OFFENSE AND EXISTENCE OF WARRANT OR OUTSTANDING CONVICTION OR SENTENCE, THUS MEETING POINTS DEPARTMENT RAISED IN REFS D AND E.

5. EMBOFF HAD OPPORTUNITY TO GLANCE AT WORKING DRAFT USED BY GOC SIDE AND CONFIRM THAT CLAUSE HAD NOT BEEN MARKED UP. WE PRESUME THAT BAZAN NEVER INFORMED ARTEAGA OF CHANGE HE HAD SUGGESTED.

6. IF DEPARTMENT AGREEABLE TO ACCEPTING GOC INTERPRETATION OF THIS CLAUSE THEN ENGLISH TEXT COULD BE CHANGED FROM "INDICATES THE PURPOSE FOR THE REQUEST OF EXTRADITION ..." TO "INDICATES THE DECISION TO REQUEST EXTRADITION ...".

7. DEPARTMENT WILL NOTE THAT LAST PART OF SAME SENTENCE IN PARA 1 ARTICLE XII NOW READS "UNA ORDEN DE ARRESTO, O UNA SENTENCIA CONDENATORIA." AT ONE POINT DEPARTMENT HAD SUGGESTED "O UNA SENTENCIA DE CULPABILIDAD OR CONDENATORIA," THEREBY RETAINING IN THE SPANISH THE AMERICAN DISTINCTION BETWEEN CONVICTION AND SENTENCING. SINCE THIS DISTINCTION DOES NOT EXIST IN CHILEAN LAW, ACCORDING TO ARTEAGA, INCLUSION OF WORDS "DE CULPABILIDAD O" IS SENSELESS AND CONFUSING IN SPANISH. WE MADE THIS POINT IN REF E, AND CANNOT FIND ANY EVIDENCE THAT DEPARTMENT DID NOT AGREE TO DROPPING THREE WORDS. LIMITED OFFICIAL USE

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8. GOC IS EAGER TO PROCEED WITH FINAL PROCESSING IN HOPES THAT TREATY WILL BE SIGNED PRIOR TO OAS GENERAL ASSEMBLY OPENING EARLY JUNE. ACCORDINGLY WE ARE SENDING TEXTS AS THEY NOW STAND TO WASHINGTON FOR FINAL REVIEW WITH HOPE THAT ARTICLE XII MATTER CAN BE CLEARED UP EXPEDITIOUSLY. BOYATT

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